R-CALF United Stockgrowers of America
P.O. Box 30715
Billings, MT 59107
Phone: 406-252-2516
Fax: 406-252-3176
E-mail: r-calfusa@r-calfusa.com
Website: www.r-calfusa.com

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Country-of-Origin Labeling Program
Room 2607-S
Agricultural Marketing Service (AMS)
United States Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250-0254

Re: R-CALF USA Comments Regarding *Mandatory Country-of-Origin Labeling for Beef, Lamb, Pork, Perishable Agricultural Commodities, and Peanuts*

The Ranchers-Cattlemen Action Legal Fund – United Stockgrowers of America (R-CALF USA) appreciates this opportunity to submit its views regarding Department's proposed rule for mandatory country-of-origin labeling (COOL) for beef, lamb, pork, perishable agricultural commodities, and peanuts. This submission responds to the Department's request for comments published in the Federal Register on June 20, 2007 at 72 Fed. Reg. 33917. R-CALF USA represents thousands of U.S. cattle producers on domestic and international trade and marketing issues. R-CALF USA, a national, non-profit organization, is dedicated to ensuring the continued profitability and viability of the U.S. cattle industry. R-CALF USA's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. Its members are located in 47 states, and the organization has over 60 local and state association affiliates, from both cattle and farm organizations. Various main street businesses are associate members of R-CALF USA.

In its request for comments, the Department seeks relevant information on whether the definitions and requirements contained in the interim final rule for COOL for fish and shellfish can be applied to a mandatory COOL program for beef and other products. R-CALF USA welcomes the Department's consideration of this approach, as R-CALF USA believes that there are many ways in which the interim final COOL rule for fish and shellfish improves upon the proposed COOL rule for beef and other products. In many instances, the simplified and streamlined requirements in the fish rule can be applied directly to the COOL program for beef, reducing implementation costs for producers while ensuring that the law is fully complied with and consumers have accurate information regarding the origin of the meat products they purchase.

I. INTRODUCTION

In 2002, Congress enacted mandatory country-of-origin labeling (COOL) for beef and other products to enable consumers to make informed choices about the food they buy and eat.[1] The law only allows beef to bear a "U.S." origin label if the meat is wholly from animals born, raised, and slaughtered exclusively in the U.S.[2] Despite consumer, producer, and congressional support for COOL, implementation of the labeling law for beef has been delayed until 2008. Recently, the U.S. House of Representatives included language in the 2007 Farm Bill reaffirming the September 30, 2008 deadline for COOL implementation and clarifying portions of the law. While the draft COOL implementing regulations published by USDA in 2003 contained numerous onerous record-keeping and retention requirements for suppliers and retailers,[3] an interim final rule for labeling of fish and seafood was released by the Department in 2004 which simplified many of these requirements and provided a much more workable model for country of origin labeling.[4] The farm bill recently passed by Congress builds on many of the innovations in the fish rule to mandate a more workable COOL program for beef and other products.[5]

Cattle producers believe that the benefits of implementing COOL will far outweigh any costs, and believe that many costs can be greatly minimized by streamlining regulatory requirements while maintaining full compliance with the law. A series of simple revisions to the draft rule of 2003, based in part on improvements made in the interim final fish rule in 2004, would greatly facilitate implementation and lower costs along each step of the production chain. These changes would help address any legitimate concerns about the costs of the labeling program, while preserving the full benefits of mandatory COOL for producers and consumers. The comments below propose a number of changes to the proposed COOL rule for beef that draw on the improvements in the interim final fish rule. These proposals can be implemented under the law as currently written, and are also fully complaint with the recent COOL language passed by the House of Representatives.

II. PROPOSED CHANGES TO DRAFT COOL RULE FOR BEEF

A) Simplify Labeling of Beef from Animals not Exclusively Born, Raised and Slaughtered in the U.S.

The COOL law requires consumers to be informed of a product's country-of-origin, and it states that beef may not be designated U.S. origin unless it is "exclusively of an animal that is exclusively born, raised, and slaughtered in the U.S."[6] The law does not currently specify how meat from an animal born or raised outside the U.S., but

[1] 7 U.S.C. § 1638 *et seq*.
[2] 7 U.S.C. § 1638a(a)(2)(A).
[3] *Mandatory Country of Origin Labeling of Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts; Proposed Rule*, 68 Fed. Reg. 61,944, Oct. 30, 2003 (hereinafter "*2003 Draft Rule*").
[4] *Mandatory Country of Origin Labeling of Fish and Shellfish; Interim Final Rule*, 69 Fed. Reg. 59,708, Oct. 5, 2004 (hereinafter "*2004 Fish Rule*").
[5] H.R. 2419, § 11104 as amended by manager's amendment.
[6] 7 U.S.C. § 1638a(a)(2)(A).

slaughtered or further processed within the U.S., should be labeled, other than to prohibit labeling such meat as U.S. origin. The 2003 draft rule would have required labels on such products that enter the U.S. during the production process to include not only "import of [country X]," but also specific identification of "the production step(s) occurring in the U.S."[7] This requirement would add costs for processors of foreign-born or fed cattle, who would need to not only identify which animals were not fully U.S.-origin, but also to identify which animals entered the U.S. along different stages of the production process.

This aspect of the proposed rule should be changed to simplify labeling of such products while continuing to prohibit labeling of such meat products as U.S.-origin, as required by the COOL law. In particular, the rule should no longer require that additional specific information on every production step that has occurred in the U.S. be included on the product's label. For example, the 2004 interim final fish rule allows fish from another country that has been partially processed in the U.S. to be labeled, "From [country X], processed in the U.S."[8] A similar approach was adopted in the farm bill that recently passed the House of Representatives. A similar label could be allowed on beef, without requiring further itemization of which exact production steps (feeding, slaughtering, etc.) occurred in the U.S. or abroad. Suppliers who wish to include such specific information would be free to do so, but not required to do so under the regulations.

B) Simplify Labeling of Blended Products

The law requires that consumers be informed of the country of origin, and only allows a U.S. label to be affixed to meat "exclusively" of U.S. animals. But the law does not provide guidance on how to label blended products incorporating meat of different origins. The draft 2003 rule would have required such products to be labeled with an alphabetical list of each country of origin for all of the raw materials included in the product.[9] This requirement to definitively name each ingredient's country of origin would require detailed tracking of meat sources along the processing line, posing logistical difficulties for processors. While it is important to ensure that such blended products are not improperly designated as "U.S." product, in violation of the COOL law, itemization of each country of origin in blended products is not required and would impose high costs with few consumer benefits.

Instead, implementing regulations for COOL for beef should allow blended products to be labeled with a list of the countries of origin that may be contained in the final product. This allows processors to list the countries of origin of all of the materials entering the production line on labels for all of the blended products emerging from the production line, without having to verify that each product actually contains product from each of the listed countries. This is the approach that was taken in the 2004 fish rule, which provides that the label on blended products shall "indicate the countries of origin

[7] *2003 Draft Rule* at 61,983 (§ 60.200(g)(1)).
[8] *2004 Fish Rule* at 59,745 (§ 60.200(g)(2)).
[9] *2003 Draft Rule* at 61,983 (§ 60.200(h)).

contained therein or that may be contained therein."[10] This is also the approach adopted by the House of Representatives in the COOL amendments contained in the 2007 farm bill. This method will give consumers a reasonable indication of likely origin, while reducing implementation costs.[11]

C) Allow Retailers to Rely on Pre-Labeled Products

The COOL law allows the Secretary to require that retailers maintain a verifiable recordkeeping audit trail that enables the Secretary to verify compliance, and a willful violation could result in fines.[12] The law also requires suppliers to provide retailers with country of origin information for products supplied to them.[13] The draft 2003 rule required retailers to maintain the documents they relied upon to establish origin (such as shipping receipts) for 7 days from sale, and to maintain records identifying retail supplier, unique product ID, and origin information for each product for 2 years.[14] Thus, retailers would be required to maintain records verifying origin for each product, and retailers would need to keep track of when each product was sold in order to maintain the required records for the appropriate time thereafter. Suppliers would also need to pass along documents indicating origin for each product, imposing potentially large administrative costs.

A more workable approach would be to allow a pre-labeled product's origin label alone to serve as sufficient documentation of origin. Retailers should only be required to maintain such documentation as long as the product is on the shelf. The 2004 fish rule specifies that, for pre-labeled products, "the label itself is sufficient evidence on which the retailer may rely to establish the product's origin."[15] Additional documentation identifying the supplier for each product must be maintained by retailers for a year, but such records need only indicate origin if it is not indicated on the pre-labeled product itself. In addition, the rule specifies that suppliers can provide origin information to retailers "on the product itself," and need not pass along separate documents substantiating origin.[16]

D) Allow Packers to Use Import Markings to Determine Origin

The COOL law requires suppliers to provide retailers with country of origin information for products they supply. The 2003 draft COOL rule stated that, in addition to providing origin information to retailers, meat packers must "possess or have legal access to records that substantiate" the origin claim.[17] In addition, importers of record were required to ensure that their own records "substantiate" origin claims.[18] Meat

[10] *2004 Fish Rule* at 59,745 (§ 60.200(h)).
[11] *2004 Fish Rule* at 59,715.
[12] 7 U.S.C. §§ 1638a(d) and 1638b(c).
[13] 7 U.S.C. § 1638a(e).
[14] *2003 Draft Rule* at 61,984 (§ 60.400(c)).
[15] *2004 Fish Rule* at 59,746 (§ 60.400(c)(1)).
[16] *See also 2004 Fish Rule* at 59,716 – 59,717 for an explanation and justification of the new system.
[17] *2003 Draft Rule* at 61,984 (§ 60.400(b)(1)).
[18] *Id*. at § 60.400(b)(4).

packers appear to have interpreted this proposed rule to require them to have access to extensive documentation from cattle producers that legally establishes the origin of the animals supplied. Alternatively, some opponents of COOL have argued that the only way to substantiate origin adequately for COOL purposes is to await full implementation of a mandatory national animal identification system, though the COOL law prohibits reliance on such a system to verify COOL origin claims.[19]

It will be much easier for packers to establish animal origin if they are allowed to use import markings to differentiate cattle of foreign origin from cattle of U.S. origin. Cattle from Mexico that are not imported for immediate slaughter must be branded with a distinct, permanent, and legible "M" or "Mx" mark and bear a numbered, blue ear tag issued by the Mexican Ministry of Agriculture.[20] Similarly, under rules promulgated in 2005, Canadian cattle imported for feeding before slaughter must be "permanently and humanely identified" with a "distinct and legible mark" branded on to the animal.[21] The mark designated by USDA for Canadian cattle is "CAN." Cattle brought in from Mexico and Canada for immediate slaughter within two weeks are not branded, but must be: 1) accompanied by an official health certificate that includes, among other things, information on the animal's country of birth and identification of the country of export; and 2) shipped in sealed containers to the slaughter establishment.[22] These rules also apply to animals born in the U.S. that are taken to Canada or Mexico for feeding and then re-enter the U.S.

This allows packers to easily identify cattle that do not qualify for a "U.S." label under COOL. Any animal that ever was in Canada in Mexico – whether it was born in one of those countries and brought in to the U.S. as breeder cattle, born and raised in one of those countries and brought to the U.S. only for direct slaughter, or born in the U.S. but transported briefly to one of those countries for feeding before returning to the U.S. – will bear a Mexico or Canada marking or arrive to the slaughterhouse in a marked, sealed conveyance. This is because every animal that crosses the border into the U.S. from Canada or Mexico is marked – thus, every single animal that does not qualify for a "U.S." origin label under the COOL law (either because it was not born and/or raised exclusively in the U.S.) will bear a clear and permanent mark that packers can rely on for origin purposes. Conversely, any animal that arrives at the slaughterhouse without a Canada or Mexico marking, and not in a sealed conveyance, has never been in Canada or Mexico and can be presumed to be of U.S. origin.

Any final rule for COOL for beef should enable packers to use cattle import markings to establish the foreign origin of cattle, and the absence of such markings to establish that cattle are of wholly domestic origin. It should also allow the use of other readily-available and reliable information sources, pending a universal marking requirement for imported cattle, to enable packers to substantiate origin claims without imposing undue implementation costs on cattle producers. The rule should specify that

[19] *See* 7 U.S.C. § 1638a(f)(1).
[20] 9 C.F.R. § 93.427(c)(1) and (d).
[21] 9 C.F.R. §93.436(b)(3).
[22] 9 C.F.R. §§ 93.420, 93.429.

suppliers may base origin determinations on importation documents, on separate tracking of animals arriving in sealed conveyances under 9 C.F.R. § 93.420 or § 93.429, or on animal import markings or tags required under 9 C.F.R. §§ 93.427(c)(1), (d), and 93.436(b)(3). Any animal that does not arrive in a sealed conveyance and does not bear such an import marking shall be deemed to be of U.S. origin by the supplier and be eligible for a "U.S." label under COOL.

In addition, the requirement that packers have "legal access" to other parties' substantiating origin documentation should be eliminated, as it was in the 2004 fish rule, which instead simply requires suppliers to possess such records.[23] Finally, importer records should not have to themselves substantiate origin if accurate origin information is already accessible in Customs import documents. The 2004 fish rule recognizes this by only requiring importers to ensure that their records "accurately reflect" the country of origin established in Customs import documents rather than requiring that the records independently substantiate origin.[24] Separate substantiating documentation is not required given that existing import records already contain the required information.[25] These changes are also reflected in the farm bill that recently passed the U.S. House of Representatives, which only requires that suppliers be able to verify origin on the basis of documents kept in the ordinary course of business.

E) Eliminate Requirement to Document the Chain of Custody

The COOL law allows the Secretary to require that retailers maintain a verifiable recordkeeping audit trail that enables the Secretary to verify compliance, and a willful violation could result in fines.[26] The 2003 draft COOL rule required suppliers and retailers to maintain documents that not only identify the immediate previous source of the product and the subsequent recipient, but also to maintain documents demonstrating the entire chain of custody for the product.[27] This requirement would add an extra record-keeping and information-gathering burden for suppliers and retailers, who would be required to pass the chain of custody information up along the supply chain with each transaction.

Implementing regulations for COOL for beef should eliminate the requirement for suppliers and retailers to document the chain of custody for each product, and rely instead on the requirement for suppliers and retailers to maintain records of the immediate previous source and the subsequent recipient of the product. This information should be sufficient for the Department to track products back through the supply chain to the original producer if necessary, and it is information that suppliers and retailers should already document in the regular course of business. Eliminating the chain of custody documentation requirement would not weaken the reliability of origin information, since all parties are still required to possess records substantiating origin claims and the

[23] *2004 Fish Rule* at 59,745 (§ 60.400(b)(1)).
[24] *Id*. at § 60.400(b)(4).
[25] *See 2004 Fish Rule* at 59,716 for a discussion of the reasons for the change.
[26] 7 U.S.C. § 1638a(d).
[27] *2003 Draft Rule* at 61,984 (§ 60.400(a)(1)).

original producers of each product would still be identifiable through retailers' and suppliers' records on previous sources of their products. The Department recognized this fact in writing the interim final rule for fish in 2004, which deletes the chain of custody documentation requirement.[28] In a Notice to the Trade issued in March of 2005, USDA reiterated that routine business documents should be sufficient to document the chain of custody in almost all cases.[29]

F) Eliminate Supplier's Duty to Demonstrate Separate Tracking

The draft 2003 COOL rule required suppliers who handle similar products from more than one country to "document that the origin of the product was separately tracked, while in their control, during any production and packaging process, to demonstrate that the identity of a product was maintained."[30] This requirement to document separate tracking created another layer of documentation beyond the requirement to substantiate origin, imposing another record-keeping burden on suppliers. The rule would have required separate documents demonstrating the steps in the production process, in addition to the basic duty to establish origin for each product supplied.

Implementing regulations for COOL for beef should delete the separate tracking documentation requirement. In the 2004 fish rule, the Department recognized that this requirement to demonstrate separate tracking was "duplicative and unnecessary" given the existing requirement to provide origin information to subsequent recipients of each product.[31] In addition, given that blended products can be labeled with the countries of origin that "may" be contained in the product under the interim final fish rule, separate tracking should no longer be needed at all stages of the production process for such products. The same should be true for a simplified COOL rule for beef. Suppliers handling product of various origins should be free to establish and maintain whatever tracking system works best in their operations, and as long as this system enables them to accurately identify the origin of their products sold to retailers, as required by the law, their system should be sufficient.

G) Reduce the Record Retention Requirement to One Year

The 2003 draft COOL rule required suppliers and retailers to maintain documents identifying the immediate previous source and subsequent recipient for each product for two years.[32] The record retention requirement adds an extra burden for suppliers and retailers to maintain files for two years after the date of a transaction. Revised implementing regulations should reduce the period of time for which suppliers and retailers must retain their records from two years to one year, as was done in the 2004

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[28] *2004 Fish Rule* at 59,716.
[29] *Notice to the Trade: Mandatory Country of Origin Labeling for Fish and Shellfish*, USDA Agricultural Marketing Service, March 2005.
[30] *2003 Draft Rule* at 61,984 (§ 60.400(b)(5)).
[31] *2004 Fish Rule* at 59,717.
[32] *2003 Draft Rule* at 61,984 (§ 60.400(b)(3) and (c)(2)).

fish rule.[33] The Department noted this timeframe is consistent with other record retention periods (such as under the Bioterrorism Act) and provides "ample time" for the Department to conduct verification activities.[34] A similar change should be made for beef.

H) Specify that Supplier Affidavits and Third-Party Verification Audits Are Not Required

The law allows the Secretary to impose fines on a retailer who has "willfully violated" the COOL law.[35] The 2003 draft COOL rule provides that intermediary suppliers and retailers shall not be held liable for mislabeled products if the violation results from the conduct of another and the intermediary supplier or retailer "could not have been reasonably expected to have had knowledge of the violation."[36] The 2003 rule also discussed the possibility of adding an affidavit requirement to the rule to give retailers added security that suppliers made a legally binding statement regarding origin.[37] Subsequently, packers have claimed that they would need such affidavits from cattle producers regarding origin to avoid liability, and would demand the right to verify producers' records through third-party audits. These provisions would add substantial expense to the administration of the COOL rule, and effectively push the costs of compliance up the supply chain to cattle producers in order to shield packers and retailers from liability.

Revised implementing regulations for COOL for beef should specify that affidavits and third-party verification are not required. As long as downstream retailers or packers could not have reasonably been expected to know of the inaccuracy of the origin claim, they cannot be held liable for the violation of another party. In writing the interim final 2004 fish rule, the agency concluded that requiring affidavits was not practicable or necessary, noting public comments indicating that such a requirement would be "expensive, onerous, and unnecessary."[38] The explanation of the final fish rule also specifies that a downstream supplier or retailer need not require third-party verification or third-party audits of an upstream supplier's origin information in order to avoid liability.

In writing the final rule for beef, the agency could further clarify the liability standard and the lack of need for affidavits and audits. For example, the final rule should specify that the fact that a downstream supplier or retailer did not require such affidavits or audits from its upstream suppliers may not be used as evidence to establish that the downstream supplier or retailer was not "reasonable" in its reliance on upstream supplier's origin claims. Furthermore, if suppliers are allowed to rely on import marking

[33] *2004 Fish Rule* at 59,745 – 59,746 (§ 60.400(b)(3) and (c)(2)).
[34] *Id*. at 59,716.
[35] 7 U.S.C. § 1638b(c).
[36] *2003 Draft Rule* at 61,984 – 61,985 (§ 60.400(b)(2) and (c)(3)).
[37] *Id*. at 61,951.
[38] *2004 Fish Rule* at 59,717.

for origin purposes as proposed in Section II.D, above, there should be no need for such expensive and burdensome affidavits or audits.

III. CONCLUSION

R-CALF USA welcomes the Department's willingness to re-examine the proposed COOL rule for beef and other products in light of the innovations contained in the 2004 interim COOL rule for fish and shellfish. The fish rule significantly streamlined and rationalized regulatory requirements to ensure that implementation of COOL would be less burdensome on producers while still upholding the COOL law and providing consumers with accurate information regarding origin. R-CALF USA urges the department to issue a new proposed rule for COOL for beef that builds upon the progress in the fish rule as outlined above. These changes to the COOL rules for beef will fully implement the original COOL law, and will also comply with new legislative language passed by Congress regarding COOL if that language were to become law. Most importantly, R-CALF USA believes that the department should take advantage of the opportunity to issue revised rules for COOL for beef to instruct suppliers that they may rely on import markings already present on imported cattle to establish origin. This solution does not require the creation or funding of any new programs by the government or the private sector – instead, the solution relies on a working import marking system that is already in place to facilitate the implementation of COOL and reduce compliance costs for producers and suppliers. This solution will ensure that consumers have the origin information that Congress intended, while greatly reducing costs for the cattle and beef industry to implement COOL.

Finally, R-CALF USA requests that a new draft rule on COOL for beef be issued without delay, so that further comments may be solicited and a final rule issued in a timely manner. This will ensure that COOL is implemented on September 30, 2008 with rules in place for the industry, as intended by Congress.

Thank you for the opportunity to submit our views on this important subject.

Sincerely,

R. M. Thornsberry DVM

R.M. Thornsberry, D.V.M.
R-CALF USA Board President